IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 10721 of 2007(B)

OS.91/2004 of SUB COURT, VADAKARA

PETITIONERS:

1. **T.JAYADASAN,S/O.T.NARAYANAN,AMULYA(H), PUDUPPANAM AMSOM,DESOM,VADAKARA TALUK.**
2. **T.CHANDRAN,S/O.T.NARAYANAN,THAYYULATHIL HOUSE,PUDUPPANAM AMSOM,DESOM,VADAKARA TALUK.**
3. **T.SURENDRAN,S/O.T.NARAYANAN, THAYYULATHIL HOUSE,PUDUPPANAM AMSOM,DESOM, VADAKARA TALUK.**

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:

1. **VIMALA BALAN,W/O.T.BALAN,PUDUPPANAM AMSOM DESOM,VADAKARA TALUK.**
2. **DR.T.BHARATHAN,S/O.T.NARAYANAN,RESIDING AT NO.4 KINGELY DRIVE,ENGLISH TOWN,NEW JUERSEY, U.S.A.**
3. **T.N.RAJAN,S/O.T.NARAYANAN,RESIDING AT NO.18,STATE BANK COLONY,KOZHIKODE TALUK,DISTRICT, CHEVAYUR AMSOM AND DESOM.**
4. **DHANALAKSHMI BHARATHAN,W/O.DR.BHARATHAN, RESIDING AT NO.4 KINGELY DRIVE,ENGLISH TOWN U.S.A NEW JERSY.**
5. **GEETHA RAJAN,W/O T.H.RAJAN,NO.18 STATE BANK COLONY,CHEVAYUR AMSOM DESOM,KOZHIKODE.**
6. **SUDHA CHANDRAN,W/O.CHANDRAN,THAYYULATHIL PUDUPPANAM AMSOM DESOM.**
7. **ANITHA SURENDRAN,W/O.T.SURENDRAN, THAYYULATHIL,PUDUPPANAM AMSOM DESOM.**

8. A.P.KUNHIKANNAN,S/O.VELUKUTTY,
VADAKKAN THURUTHIYIL,PALAYAD AMSOM DESOM,
VADAKARA TALUK.

9. A.P.RATNAKARAN,S/O.KUNHIKANNAN,KALLINGAL
KACHERY AMSOM DESOM,KOZHIKODE TALUK.

10. A.P.PREMARAJAN,S/O.KUNHIKANNAN,
VADAKKAN THURUTHIYIL.

11. A.P.VALSAN,S/O.KUNHIKANNAN,VADAKKAN
THURUTHIYIL,PALAYAD AMSOM DESOM,VADAKARA TALUK.

12. A.P.VANAJA,W/O.JAYARAJ,THATTAH,
ORIKATTERY AMSOM DESOM,VADAKARA TALUK.

13. JALAJA DEVADAS,W/O.DEVADAS,AISHWARYA,
MALAPARAMBA,VENGERY VILLAGE,KOZHIKODE TALUK,
KOZHIKODE DISTRICT.

14. VRIJ MOHAN,S/O.T.BALAN,ARJUNA,
PUDUPPANAM AMSOM DESOM.

15. BUELA RAJEEVAN,W/O.RAJEEVAN,
PUDUPPANAM AMSOM DESOM,

16. T.ARJUN,S/O.T.BALAN,PUDUPPANAM AMSOM
DESOM.

BY ADV. SRI.BIJU ABRAHAM
SRI.B.G.BHASKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.10721/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PLAINT IN OS. 21/04 DT.9.12.04, SUB COURT , VATAKARA.

EXT.P2:- COPY OF THE COMMON ORDER IN IA. NO.296/07 AND IA. 297/2007 IN OS. NO.91/04 SUB COURT, VATAKARA DT.16.3.07.

RESPONDENTS EXHIBITS

EXT.R3(A):- COPY OF THE LETTER DT.1.3.99 BY THE 1ST PETITIONER PRECEDING THE FAMILY SETTLEMENT.

EXT.R3(b):- COPY OF THE FAMILY ARRANGEMENT DT.28.9.01.

EXT.R3(c):- COPY OF THE JOINT LETTER SIGNED BY THE 1ST PETITIONER ALSO ADDRESSED TO THE BANK DT.23.1.02.

EXT.R3(d):- COPY OF THE ORDER OF THE DISTRICT COURT VATAKARA IN CMA. 61/06 DT.1.2.07.

/TRUE COPY/

P.A. TO JUDGE

tss

M.N.KRISHNAN, J

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W.P.(C) No.10721 OF 2007

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Dated this the 1st day of June, 2007

JUDGMENT

This writ petition is filed seeking to set aside Ext.P2 order as far as it relates to sufficiency of court fee paid on Ext.P1 plaint. As per Ext.P2 the court below framed an additional issue regarding court fee and found that the court fee paid is correct. The court held that the court fee paid under Section 37(2) is sufficient. It is to set aside that order the present writ petition is filed.

2. A reading of the prayer in the plaint would reveal that the plaintiff has sought for partition of the property claiming joint status and possession. Plaintiff valued the plaint property under Section 37(2) of the Court Fees Act. Learned counsel for the revision petitioners would submit that though the prayer superficially appears to be one for partition, really what is intended is the specific performance alleged to be entered in to. As far as the plaintiff is concerned, the court fee has to be paid on the pleadings in the plaint and the prayer which the plaintiff seeks. The question whether the plaintiff will be entitled to such a relief is a matter that has to be considered

by the court. If defendants have got a contention that the suit as framed for partition is not maintainable, it is for him to raise such a contention and the court is bound to consider it and dispose of the matter. Since, as per the averments in the plaint, the suit is one for partition and separation of properties held jointly, what is attracted is Section 37(2) of the Court Fees Act and therefore the order passed by the learned trial court does not suffer from infirmity. But, I make it clear that if defendants got a contention that the suit itself is not maintainable such issue may be framed and heard. The trial court shall endeavour to dispose of the matter as expeditiously as possible.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-